United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

77-7236

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ALBERT A JORIOU,

Plaintiff--Appellant

V.

FEDERATION OF THE HANDICAPPED AND DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,

Defendant-Appellees

CIVIL APPEAL

Docket # 77-7236

BRIEF AND APPENDIX IN SUPPORT OF APPEAL

B

P/S

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UNITED STATES COURT OF APPEALS
FILED
SEP 22 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

UNITED STATES DISTRICT COURT
FOR THE SECOND CIRCUIT

ALBERT A JORIOU,	:	
Plaintiff-Appellant, Pro Se	:	CIVIL APPEAL
V.	:	Docket # 77-7236
FEDERATION OF THE HANDICAPPED AND DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,	:	BRIEF AND APPENDIX IN SUPPORT OF APPEAL
Defendant-Appellees	:	

Statement of the facts

1. On February 23, 1976, pursuant to charge of discrimination and EEOC affidavit filed January 8, 1976, a fact finding conference before the New York City Commission on Human Rights was held at which a determination of no probable cause of unlawful employment discrimination was rendered preliminary to notification of right to sue before the United States District Court for the Southern District of New York.

2. Complaint and summons was filed in the matter against the Federation of the Handicapped and Drug Abuse Control Commission of the State of New York as Co-Defendants on December 20, 1976 (ROA, Document I)

3. A preliminary hearing before United States Magistrate Sol Schreiber dated February 15, 1977 was held. (ROA, Document)

4. A notice of motion with memorandum of law in support of Defendant Drug Abuse Control Commission of the State of New York's motion to dismiss on alleged grounds of lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted was filed on February 23, 1977 (ROA, Documents III and IV)

5. A Plaintiff's reply brief to answer of Defendant Drug Abuse Control Commission of the State of New York dated February 29, 1977 was filed (ROA, Document XIII)

6. A general denial in answer to the allegations as contained in the complaint and summons by the Defendant Federation of the Handicapped dated March 1, 1977 was filed (ROA, Document VI)

7. Plaintiff's rebuttal to the general denial in answer was filed on March 3, 1977 (ROA, Document V)

8. Plaintiff filed a reply to a supplementary memorandum of the Drug Abuse Control Commission's motion to dismiss dated March 12, 1977 (ROA, Document XIV)

9. A memorandum directing the Defendant Drug Abuse Control Commission of the State of New York to produce a copy of pertinent evidentiary matter was issued by the court and filed March 30, 1977 (ROA, Document VII)

10. A response of Defendant Federation of the Handicapped to Plaintiff's Notice to Produce was filed on April 12, 1977 (ROA, Document IX)

11. A notice to take deposition upon oral examination was filed on April 12, 1977 (ROA, Document VIII)

12. A brief in reply to response and notice to take deposition of the Defendant Federation of the Handicapped was filed on April 15, 1977 (ROA, Document)

13. A memorandum dismissing the complaint as against the Drug Abuse Control Commission of the State of New York was issued by the court and filed May 4, 1977 (ROA, Document X)

14. A petition for reversal of order was filed with the court on May 10, 1977 (ROA, Document)

15. A motion for rearguement or reconsideration was denied by the court and filed May 12, 1977 (ROA, Document XI)

16. A notice of appeal to the second circuit was filed on May 16, 1977 (ROA, Document XII)

17. A Deposition of the Defendant Federation of the Handicapped pursuant to notice filed with the court dated July 18, 1977 was taken July 20, 1977 (ROA, Document)

18. On July 26, 1977, pursuant to notice of right to sue of the Justice Department dated July 22, 1977, a notice of motion for reinstatement of complaint as against the Drug Abuse Control Commission of the State of New York was filed (ROA, Document)

Arguement in support

The fundamental deficiency which is being appealed here is the legality, propriety and validity of a local human rights agency to wit the New York City Commission on Human Rights, to deny service on request of a vital instrument and condition for legal action before the Equal Employment Opportunity Commission, a prerequisite for further action in the federal courts. The court is referred to corroborating testimony in this regard to be found in the transcript of deposition of the Defendant Federation of the Handicapped taken July 20, 1977.(Document Pages 53-55 inclusive)

The instrument or document at issue is a letter of adverse employment reference of the dismissed Defendant Drug Abuse Control Commission of the State of New York (Document IV) advanced at a fact finding conference before the New York City Commission on Human Rights on February 23, 1976, in support of Defendant Federation of the Handicapped's rejection of Appellant for employment in that agency, but only for the first time served on demand upon him on April 7, 1977 by Attorneys for said Federation of the Handicapped.

These matters were brought to the attention of the district court in a preliminary hearing before United States Magistrate Sol Schreiber on February 15, 1977 (Transcript, Page 7, Lines 13 to 17, Document), in Plaintiff's reply brief dated February 29, 1977 (Document XIII, Pages 3 and 4 attached) and in the petition for reversal of order dated May 10, 1977 (Document , Page 2, Par 8 attached)

In other aspects of the court's determination to dismiss, the fact that Appellant failed to invoke administrative or other remedies pursuant to separation from state employment in March of 1974 is not a waiver of any future right to initiate an employment discrimination action against that former employer where such discrimination is continuous and systematic as in the case at bar.

The resulting remedy might very well have been reinstatement to the former State employment but is not the objective in a

case where an Appellant (this Appellant) seeks rightful relief from less than tolerable employment in alternative employment pursuant to separation.

The letter of separation of the Personnel Director (encompassed within the complaint papers, Document I) merely confirms what has been determined by the employer to be the final day of service without disclosing the reasons for separation made known in the subsequent adverse employment reference of the Education Director dated November 20, 1976 and addressed "To whom it may concern".

Not having the actionable grounds prior thereto in such confirmation of separation and not having been served with the actual documentation of adverse reference until April 7, 1977, Appellant was in no position to initiate the timely action which the court in support of its determination claims should have been earlier initiated, the failure of which serving as the justification for dismissing the complaint as against the Drug Abuse Control Commission of the State of New York.

The chief purpose of this appeal is to establish the principal ignored by the lower court that, merits notwithstanding, the running time within which to file such action cannot properly be initiated prior to legal and valid service upon a Plaintiff of the pertinent instrument of legal action, to wit, the letter of adverse employment reference on April 7, 1977, the date of actual service on demand by Attorneys for the Federation of the Handicapped, any more than an action in federal court can be commenced prior to receipt of a pertinent notice of right to sue and Appellant herein should not be bound to a prior date limiting his right to sue in this regard to be afforded a legitimate remedy either before the Equal Employment Opportunity Commission or the District Court.

And speaking of a pertinent notice of right to sue, the merits of the instant appeal are also bolstered by communication of the Justice Department dated July 22, 1977 affirming the right to sue in this matter within 90 days (Document , Notice of Motion for Reinstatement attached)

While the letter of adverse reference per se may not on the face appear to be an act of discrimination within the meaning of Title VII, as the court is so eager to point out in its decision, it nonetheless constitutes clear and incontroverted evidence of denial of opportunity in a specific agency to which Appellant applied for a position in which he was well qualified. In point of fact the testimony of the Defendant Federation taken in deposition reveals that Appellant was better qualified than the candidate selected over him for the subject position on the basis of background and experience (The court is referred to the transcript of deposition in this regard, Page 106, lines 18 & 19, Document attached) in addition to which the letter of employment rejection dated December 17, 1975 indicates "nothing in my background lacking in any particular area" (Letter encompassed within complaint papers attached, Document I) Any such continued use of such an instrument by the state to obstruct other opportunities and efforts at re-employment would be a prohibition of Title VII subject to injunction or restraining order.

Appellant, in his attempt to defend a legitimate property interest, namely the right to a livlihood, is therefore entitled to an opportunity to effectively discredit such adverse material on the merits with remedy which requires that the subject agency be reinstated as a properly charged party.

So the instant appeal seeks to rejoin the parties as co-defendants upon the ground that a conspiracy of such co-defendants existed to deny the specific employment at issue, that continuous employment discrimination by the same Drug Abuse Control Commission of the State of New York prevails with respect to Appellant's other efforts at mitigation as evidenced by his resulting unemployment of over two years duration, and also upon the more invidious ground that such a situation would never have developed had Appellant been of Judiac extraction, the established race of his adversaries and the race of the candidate chosen in his place.

Since Appellant is not in a position to deny affiliation as former employee of the State of New York as a legitimate part of qualifying experience for alternative employment in his professional field of specialization, the negative appraisal of his work history, during the period of said employment is clearly obstructive, prejudicial and otherwise damaging to securing and retaining subsequent employment commensurate with his training and background which is an undeniable property right. This is employment discrimination in its most invidious form with the blessing of the judiciary because Appellant is deprived of remedy against the co-conspirators of his employment disqualification by a determination which in effect has prematurely exonerated a defendant prior to trial on the merits which cripples the whole action beyond repair for which he is entitled to redress in this appeal.

Summary

1. The initial letter of termination from state employment contained insufficient or no actionable grounds either on the face or on the merits for an action at the time pursuant to Title VII which if commenced would have been hopelessly lacking in compelling evidence and justification therefor.

2. The testimony of the Defendant Federation of the Handicapped in deposition confirms the refusal of the New York City Commission on Human Rights to authorize proper service on request of the subject adverse letter of employment reference prerquisite to valid action before the Equal Employment Opportunity Commission the failure of which was the justification for the court's poorly informed determination to dismiss but which should not be adversely binding on Appellant.

3. Appellant has the appropriate notice of right to sue of the Justice Department sufficient to establish the Drug Abuse Control Commission of the State of New York as a properly charged co-defendant.

4. Appellant herein is defending a legitimate property interest, namely the right to be afforded a livlihood unencumbered by fraudulent and erroneous appraisal of prior work history which is being denied with the blessing of the Judiciary.

5. The extraordinary circumstances of this matter merit the court's most serious consideration.

Conclusion

The determination of the lower court to dismiss the action for the reasons set forth is an uninformed, hasty and premature decision which in the interest of equity, justice and propriety must be reversed.

WHEREFORE, Appellant Pro Se, in this action, upon all of the foregoing grounds with annexed exhibits moves this court for an order reinstating the Drug Abuse Control Commission of the State of New York as a properly charged party to the action and co-defendant with the Defendant Federation of the Handicapped and for any other relief which the court may deem just and properin the circumstances.

Dated: Jackson Heights
New York
September 13, 1977

Respectfully Submitted,

ALBERT A. CORIOU,
Appellant, Pro Se
P.O. Address
94-26 34th Road
Jackson Heights
New York, 11372
(212) 457-4478

STATE OF NEW YORK)
COUNTY OF QUEENS) ss:

Subscribed and sworn to before me
This ___ day of _____ 1977

_____
[illegible] A. HORN
Notary Public, State of New York
No. 30-6962350
Qualified in Nassau County
Commission Expires March 30, 1978

INDEX OF ATTACHMENTS

DOCUMENT I. Complaint and Summons dated December 20, 1976

DOCUMENT III. Notice of Motion to dismiss of Defendant Drug Abuse Control Commission of the State of New York dated February 23, 1976.

DOCUMENT IV. Memorandum of Law in support of Defendant Drug Abuse Control Commission of the State of New York's motion to dismiss dated February 23, 1976.

DOCUMENT V. Plaintiff's rebuttal to the general denial in answer of the Defendant Federation of the Handicapped dated March 3, 1977.

DOCUMENT VI. Answer of the Defendant Federation of the Handicapped to the Summons and Complaint dated March 1, 1977.

DOCUMENT VII. Memorandum of the court directing Defendant Commission to furnish a copy of its letter of adverse employment reference dated March 29, 1977.

DOCUMENT VIII Notice to take deposition upon oral examination of the Defendant Federation of the Handicapped Dated April 8, 1977.

DOCUMENT IX. Response of the Defendant Federation of the Handicapped to Plaintiff's notice to produce dated April 7, 1977.

DOCUMENT X. Memorandum of the court dismissing the complaint as against the Drug Abuse Control Commission of the State of New York dated May 3, 1977.

DOCUMENT XI. Memorandum of the court denying motion for re-arguement or reconsideration dated May 11, 1977.

DOCUMENT XII. Notice of appeal to the United States Court of Appeals for the Second Circuit dated May 16, 1977.

DOCUMENT Transcript of preliminary hearing before United States Magistrate Sol Schreiber dated February 15, 1977.

DOCUMENT Appellant's brief in reply to response and notice to take deposition of the Defendant Federation of the Handicapped dated April 15, 1977.

DOCUMENT Petition for reversal of order dated May 10, 1977.

DOCUMENT Deposition of the Defendant-Federation of the Handicapped, pursuant to notice filed with the court dated July 18, 1977 and taken July 20, 1977 by Appellant.

DOCUMENT Notice of motion for reinstatement dated July 26, 1977 pursuant to notice of right to sue of the Justice Department dated July 22, 1977.

To: ALLEN SCOTT MOLLER, Esq.
Assistant Attorney General
Attorney for the Drug Abuse
Control Commission of the State
of New York
Office and P.O. Address
Two World Trade Center
New York, N.Y. 10047

MARK A. SIEGERTOK, Esq.
Winer, Neuburger and Sive
Attorneys for the Federation of the Handicapped
425 Park Avenue
New York, N.Y. 10022

AFFIDAVIT OF SERVICE

I, ALBERT A. CORIOU, Appellant Pro Se in this action before the United States Court of Appeals for the Second Circuit, declare under the penalty of perjury that I have served a copy of the within Brief and Appendix in Support of Appeal with attachments by depositing same, properly enclosed in a post paid wrapper, in the post office letter recepticle regularly maintained at 33-23 Junction Boulevard, Corona, New York 11368 directed to ALLEN SCOTT MOLLER, Esq and MARK A. SIEGERTOK, Esq., respective Attorneys at Law for the Defendants Commission and Federation, at the addresses indicated within the state designated by them for that purpose or the place where they kept an office, between which places there then was and now is a regular communication by mail.

ATTEST,

Albert A Coriou

ALBERT A. CORIOU
Date: September 19, 1977

SOUTHERN DISTRICT OF NEW YORK

DOCUMENT I

Rt
pfs 15
July 20, 1977
schepo

ALBERT A CORIOU

NAME OF PLAINTIFF or PLAINTIFFS

CIVIL NO. 76 Civ 5652

vs.

FEDERATION OF THE HANDICAPPED

STATE OF NEW YORK
DRUG ABUSE CONTROL COMMISSION

NAME OF DEFENDANT or DEFENDANTS

COMPLAINT AND MOTION FOR OTHER RELIEF

1. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, for employment discrimination. Jurisdiction is specifically conferred on this Court by 42 U.S.C. §2000e-5. Equitable and other relief are also sought under 42 U.S.C. 2000e-5(g).

2. Plaintiff(s) is a citizen of the United States and resides at 94-26 34th Road (Street Address), Jackson Heights, New York (City), Queens (County), New York (State), (212) 457-4478 (Phone Number).

3. Defendant(s) lives at, or its business is located at 154 West 14th Street (Street Address), New York (City), New York (County), New York (State).

4. Please state the address at which you sought employment or were employed by the defendant(s) 154 West 14th Street, New York, NY 1001 (Street Address)

5. State as nearly as possible when the alleged discriminatory acts occurred: 17 (Day), December (Month), 1975 (Year).

6. State as nearly as possible when you filed charges with the New York ~~State~~ City Human Rights Commission regarding Defendant's alleged discriminatory conduct: January 26, 1976

Document 1

7. State as nearly as possible when you filed charges with the Equal Employment Opportunity Commission regarding Defendant's alleged discriminatory conduct: 8 (Day), January (Month), 1976 (Year).

8. The Equal Employment Opportunity Commission issued the attached Notice of Right to Sue letter which was received by you on 26 (Day), November (Month), 1976 (Year).

(Note: Please attach Notice of Right to Sue letter to this Complaint.

9. The acts complained of by you, in this suit, concern:

A. X Failure to employ you.

B. X Termination of your employment. (ENCLOSURE, PRIOR EMPLOYER)

C. ___ Failure to promote you.

D. X Other acts (please specify) _____

Respondent lied in an unsolicited letter of rejection dated December 17, 1975 (Copy enclosed) about the reasons for my non-selection and pursuant thereto conspired with a prior employer, the State of New York, to allege a wrongful and fraudulent unfavorable employment reference in justification thereof which complaintant was not permitted to rebut in the commission's fact finding hearing. The foregoing constitutes a deficiency in due process for which in addition to the merits plaintiff seeks relief.

Moreover, by admission of respondents, an applicant of Judiac extraction was selected over the complaintant clearly indicating their preference in this regard while acknowledging no deficiencies in plaintiff's background to justify disqualification other than that of religion and national origin.

Complaintant has and continues to be swindled with impunity from employment opportunities as a consequence of the foregoing adverse actions.

10. Defendant's conduct is discriminatory with respect to which of the following:

A. ___ Your race.

B. ___ Your color.

C. ___ Your sex.

D. X Your religion

E. X Your national origin.

11. Do you believe that the Defendant or Defendants are still committing these acts against you? X Yes ___ No.

Document 1

12. A copy of the charge to the Equal Employment Opportunity Commission is attached to this complaint and is submitted as a brief statement of the facts of your claim.

13. If relief is not granted, Plaintiff will be irreparably denied rights secured by Title VII of the 1964 Civil Rights Act, as amended.

14. Plaintiff(s) has no adequate remedy at law to redress the wrongs described above.

WHEREFORE, Plaintiff(s) prays (check appropriate letter(s)) as follows:

A. X That all fees, costs or security attendant to this litigation be hereby waived,

B. X That the Court appoint legal counsel.

C. X That the Court grant such relief as may be appropriate, including injunctive orders, damages, costs and attorney's fees.

Albert A Corson
SIGNATURE OF PLAINTIFF

Albert A Corson
SIGNATURE OF PLAINTIFF

STATE OF NEW YORK
COUNTY OF QUEENS
AFFADAVIT OF SERVICE

The undersigned affirms that he resides at 94-26 34th Road Jackson Heights Queens in the City of New York and that he is over 21 years of age. On the 20 day of DECEMBER 19__, he served upon the following agencies: Federation of the Handicapped, State of New York, Drug Abuse Control Commission, a copy of this complaint & motion depositing the same, properly enclosed in a post paid wrapper, in the post office letter box, regularly maintained at 33-23 Junction Boulevard Corona, New York directed to the following named persons: Mr. Charles I scheps, Program Coordinator, Federation of the Handicapped and Stephan P. Daly, Director of Personnel, State of New York Drug Abuse Control Commission at the addresses within the state designated by them for that purpose or the place where they kept an office, between which places there then was and now is a regular communication by mail.

Sworn to before me this 20TH day of DEC 1976 SERVICE BY US MARSHALL

Joseph A Horn
SIGNATURE OF NOTARY

JOSEPH A. HORN
Notary Public, State of New York
No. 30-6922650
Qualified in Nassau County
Commission Expires March 30, 1978

Albert A Corson
SIGNATURE OF PLAINTIFF

DOCUMENT I

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE

NOV 26 1976

TO:	FROM:
Albert A. Coriou 94-26 34th Street Jackson Heights, New York 11372	Equal Employment Opportunity Comm. New York District Counsel 90 Church Street, Rm. 1301 New York, New York 10007

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:	EEOC REPRESENTATIVE	
☒ NO REASONABLE CAUSE ☐ UNTIMELY CHARGE	Ralph Munoz, District Counsel	
NO JURISDICTION ☐ FAILURE TO PROCEED	TELEPHONE NUMBER 212-264-7161	CASE/CHARGE NUMBER TNY 6-0913

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where ~~you live~~*. If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

Arthur W. Stern
District Director

cc Federation of the Handicapped
154 W. 14th Street
New York, New York 10011

DOCUMENT I

* RESPONDENT IS LOCATED.

EEOC FORM APR 73 161

DOCUMENT I

DEP ITEM 5

DOCUMENT J

CHARGE OF DISCRIMINATION

OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION

- [X] RACE OR COLOR
- [ ] SEX
- [ ] RELIGIOUS CREED
- [X] NATIONAL ORIGIN

NAME *(Indicate Mr. or Ms.)*: MR ALBERT A. CORONA

DATE OF BIRTH: 3/30/34

STREET ADDRESS: 94-26 37TH ROAD

COUNTY: QUEENS

SOCIAL SECURITY NO.: 102-30-0618

CITY, STATE, AND ZIP CODE: JACKSON HEIGHTS, NEW YORK 11372

TELEPHONE NO. *(Include area code)*: [212] 457-1478

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Ms.)*: MRS. JEANNE CORONA

TELEPHONE NO. *(Include area code)*: [212] 458-7028

STREET ADDRESS: 94-26 34 ROAD JACKSON HEIGHTS

CITY, STATE, AND ZIP CODE: NEW YORK, 11372

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME: FEDERATION OF THE HANDICAPPED

TELEPHONE NO. *(Include area code)*: [212] 242-9050

STREET ADDRESS: 15W WEST 14 STREET

CITY, STATE, AND ZIP CODE: NEW YORK, N.Y. 10011

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*:

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY: [ ] YES [X] NO

DATE FILED:

AGENCY CHARGE FILED WITH *(Name and address)*:

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST: EIGHT

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*: DECEMBER 17, 1975

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

I WAS ASKED TO PARTICIPATE IN AN INTERVIEW FOR A POSITION WITH THE FEDERATION OF THE HANDICAPPED FOR WHICH I WAS FULLY QUALIFIED BUT FOR WHICH SOMEONE ELSE HAD BEEN SELECTED PURSUANT TO FURTHER RECRUITMENT BY THE PROSPECTIVE EMPLOYER AND PURSUANT TO UNSPECIFIED CRITERIA OF SELECTION ON A BASIS OTHER THAN INDIVIDUAL MERIT. THIS IS AT VARIANCE FROM WHAT IS CUSTOMARILY THE CASE WITH OTHER CANDIDATES WHO ARE SELECTED FOR THE POSITIONS SOUGHT WHEN THE MERITS OF THEIR INDIVIDUAL CANDIDACIES ARE ESTABLISHED. THE BASIS OF THIS COMPLAINT IS A LETTER OF POLICY FROM THE PROSPECTIVE EMPLOYER WHICH ALLEGES A RATHER LARGE NUMBER OF UNSPECIFIED VARIABLES HAVING NOTHING WHATEVER TO DO WITH MERIT AND FITNESS FOR THE POSITION SOUGHT, AS THE JUSTIFICATION FOR REJECTION OF MY CANDIDACY.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE: 1/8/76

CHARGING PARTY *(Signature)*: Albert A Corona

Subscribed and sworn to before this EEOC representative.

DATE:

SIGNATURE AND TITLE:

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)*:

SIGNATURE *(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

Albert A. Corona

EEOC FORM JUN 72 5 Previous editions of this form may be used.

GPO 885-959

DOCUMENT I

DEP, ITEM 5
DOCUMENT I

EEOC AFFIDAVIT

☐ RESPONDENT ☒ CHARGING PARTY ☐ WITNESS

After being duly sworn and upon my oath, I depose and say:

NAME: ALBERT A. CORIOU	AGE: 41	TEL NO. (Give area code): [212] 457-4478
ADDRESS (Number and street): 94-26 34 ROAD JACKSON HEIGHTS N.Y. 11372	CITY: NEW YORK	
COUNTY/PARISH: QUEENS	STATE/COMMONWEALTH: NEW YORK	

THE FOLLOWING PERSON CAN ALWAYS CONTACT ME

NAME: JEANNE CORIOU	RELATIONSHIP: MOTHER	TEL NO. (Give area code): [212] 458-7028
ADDRESS (Number and street): 94-26 34 ROAD JACKSON HEIGHTS N.Y. 11372	CITY AND STATE/COMMONWEALTH: NEW YORK	

STATUS OF EMPLOYMENT

Check One: ☐ NOT WORKING ☐ WORKING ☒ SOUGHT EMPLOYMENT AT

NAME OF EMPLOYER: FEDERATION OF THE HANDICAPPED

TYPE OF BUSINESS: VOCATIONAL REHABILITATION

DATES OF EMPLOYMENT/WHEN EMPLOYMENT WAS SOUGHT: FROM 11/17/75 TO 12/17/75

POSITION TITLE: EVALUATOR

DEPARTMENT:

LOCATION (Number and street): 154 WEST 14 STREET

CITY: NEW YORK N.Y. 10011

COUNTY/PARISH: NEW YORK

STATE/COMMONWEALTH: NEW YORK

WORK TEL NO. (Give area code): [212] 242-9050

Additionally, PURSUANT TO AN ADVERTISEMENT PLACED IN THE NEW YORK TIME SUNDAY, NOVEMBER 17, 1975 BY THE SUBJECT EMPLOYER, SEEKING AN INDUSTRIAL ARTS GRADUATE TO WORK IN A VOCATIONAL REHABILITATION PROGRAM SERVING THE HANDICAPPED, I RESPONDED ON THE SAME DATE BY RESUME ADDRESSED TO THE BOX NUMBER PROVIDED. ON NOVEMBER 25, 1975 I RECEIVED A PHONE CALL FROM MR. CHARLES SCHEPS, PROGRAM COORDINATOR, FEDERATION OF THE HANDICAPPED, INDICATING RECEIPT OF MY RESUME AND REQUESTING TO INTERVIEW ME IN CONNECTION WITH THE VACANCY AT ISSUE. AN APPOINTMENT WAS DULY ARRANGED AND I APPEARED AT THE FEDERATION OFFICES ON NOVEMBER 26, 1975 AT 9:30 AM AT WHICH TIME I WAS INTERVIEWED BY THE CALLER MR SCHEPS. THE NATURE OF THE EMPLOYMENT WAS THOROUGHLY DISCLOSED BY THE INTERVIEWER WHO UPON VERIFYING MY INTEREST IN CONNECTION THEREWITH ASKED IF I WOULD BE WILLING TO BE SUBJECTED TO A FURTHER SCREENING PROCEDURE BY A DR SLATER, PRESUMABLY OF THEIR STAFF. I HAD NO OBJECTION. THE INTERVIEW WAS TERMINATED AT APPROXIMATELY 11:00 AM AT WHICH TIME I WAS TOLD I WOULD BE FURTHER ADVISED IN THE NEAR FUTURE.

SUBSEQUENT THERETO, THE FEDERATION RAN A SECOND AD ON NOVEMBER 30, 1975 IN THE NEW YORK SUNDAY TIMES PRESUMABLY UPON THE GROUND THEY FAILED TO RECRUIT A CANDIDATE WHICH MET THE SPECIFICATIONS OF THE VACANCY. I WISHED TO SOLIDIFY MY INTEREST IN THE POSITION AND THEREFORE TOOK ADDITIONAL PAINS TO RESUBMIT ANOTHER COPY OF MY QUALIFICATIONS RESUME IN

EEOC FORM 133

DOCUMENT I

REPLY THERETO.

ON DECEMBER 17, 1974 I RECEIVED A LETTER OF REJECTION UPON THE GROUND THAT SOME LARGE NUMBER OF UNSPECIFIED VARIABLES HAD PRECLUDED MY SELECTION BUT WAS NOT INDICATED TO THE LACK OF A BACKGROUND.

THE MANNER IN WHICH THE PARTICULARS OF THE FOREGOING SITUATION DIFFERED FROM WHAT OTHER APPLICANTS WERE SUBJECTED TO IS THAT THEY WERE AFFORDED THE OPPORTUNITY TO ESTABLISH THE STRENGTHS OF THEIR CANDIDACIES BY COMPETITION THROUGH A FURTHER SCREENING PROCESS WHICH I WAS UNCEREMONIOUSLY DENIED. THE DR. SLITTER WHO MR. SCHEPS REFERRED TO AT THE INTERVIEW WAS PRIVY TO ONLY A PARTIAL SAMPLING OF CANDIDATES AVAILABLE TO FILL THE VACANCY IN ADDITION TO WHICH THE VARIABLES APPLIED TO THEIR CANDIDACIES WERE NOT NECESSARILY, UNDER THE CIRCUMSTANCES, ALL THE SAME AS THE CRITERIA APPLIED TO MINE.

IF FOR EXAMPLE I HAD ALL THE ESSENTIAL QUALIFICATIONS AND THERE IS NO REASON WHATSOEVER TO BELIEVE I DID NOT, WHICH EXCEEDED ALL OF MY COMPETITORS, BUT I FAILED ONLY TO QUALIFY ON THE BASIS OF THE NATIONAL ORIGIN VARIABLE, TO WIT JUDAIC, A CLEAR CASE OF DISCRIMINATION ARISES FOR WHICH I AM ENTITLED TO AND RESPECTFULLY REQUEST REDRESS.

PLEASE BE ADVISED THAT I AM TAKING THE LIBERTY OF INCLUDING THE NAMES OF THE SIX OFFICERS OF THE FOUNDATION AS RESPONDENTS IN THIS MATTER IN ADDITION TO THE NAMES OF SCHEPS AND SLITTER AS SET FORTH IN THIS AFFIDAVIT, TO WIT:

LEON R. ESCOW, PRESIDENT
S. LE ROY FRENCH, VICE PRESIDENT
STANLEY S. GOLDFARB VICE PRESIDENT
LEON M. NAD, TREASURER
MISS JOSEPH ROSENBERG, SECRETARY
MILTON COHEN, EXECUTIVE DIRECTOR

I swear or affirm that I have read the above statement and that it is true to the best of my knowledge, information and belief.

SIGNATURE	SOCIAL SECURITY NO.	TOTAL NO. OF PAGES
Albert A Corson, JANUARY 8, 1976	102-30-0618	2

DATE	TITLE	

DOCUMENT I

DEP. ITEM 5 IV

LEON R. ELSOHN President
S. LeROY FRENCH, Vice-President
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FEDERATION OF THE HANDICAPPED
154 WEST 14th STREET • NEW YORK, N. Y. 10011 • 242-9050

MILTON COHEN, Executive Director

December 17, 1975

Mr. Albert A. Coriou
94-26 34th Road
Jackson Heights, N.Y. 11372

Dear Mr. Coriou

Please accept my apologies for not getting back to you earlier, but interviewing for the evaluator position took considerably longer than I had anticipated.

Although we have hired someone else for the position please be assured that it was a rather difficult choice to make. Due to the nature of the program, it was necessary to weigh a rather large number of variables, and you should in no way feel that your background was lacking in any particular area.

Thank you for taking the time to meet with me.

Very truly yours,

Charles I. Scheps
Program Coordinator

DEP. ITEM 6

DOCUMENT I

DOCUMENT I

NEW YORK STATE
DRUG ABUSE CONTROL COMMISSION
EXECUTIVE PARK SOUTH
ALBANY, NEW YORK 12203

March 14, 1974

Mr. Albert Coriou
94-26 34th Road
Jackson Heights, NY 11372

Dear Mr. Coriou:

This is to confirm your termination from your position of Institution Teacher at the Arthurkill Community Rehabilitation Center, during your probationary period. Your final day of work will be Wednesday, March 27, 1974.

Very truly yours,

Stephen P. Daly
Director of Personnel

SPD:md

DOCUMENT I

13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALBERT A. CORIOU,

Plaintiff,

vs.

FEDERATION OF THE HANDICAPPED AND DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,

Defendants.

76 Civ. 5652

February 15, 1977
12:15 P. M. - Room 121

Hearing Before MAGISTRATE SOL SCHREIBER, at the United States Courthouse, Foley Square, New York, New York, on Tuesday, February 15, 1977, at 12:15 P. M., before Arthur Russell, a Certified Shorthand Reporter and Notary Public of the State of New York.

RECEIVED MAIL
FEB 16 1977
DEPARTMENT OF LAW
NEW YORK CITY OFFICE

APPEARANCES:

ALBERT A. CORIOU,
Pro Se

LOUIS A. LEFKOWITZ,
Attorney General
State of New York,
BY: ALLAN MOLLER, ESQ.,
Assistant Attorney General.

an alleged unfavorable employment reference from the State of New York, my prior employer, had been produced as evidence by the Federation of Handicapped and therefore I concluded, logically, they ought to be a party to the action.

THE MAGISTRATE: You mean the --

MR. CORIOU: The State of New York ought to be a party to the action.

THE MAGISTRATE: In doing that the State is now contending that they should have been a party to the Equal Employment action, otherwise --

MR. CORIOU: I had not knowledge that the State would become a party to the action until the unfavorable employment reference was produced at the hearing of the Commission, at the Human Rights hearing.

THE MAGISTRATE: All right. We will leave that question open at this stage because the court is not considering it at this moment.

What objection -- although I do find it hard to understand why counsel needs eight days in order to file --

MR. CORIOU: I do too, sir.

MR. MOLLER: One of the reasons I need

Document III

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALBERT A. CORIOU,

Plaintiff,

-against-

FEDERATION OF THE HANDICAPPED and DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,

Defendants.

NOTICE OF MOTION
76 Civ. 5652
Pro Se

S I R :

PLEASE TAKE NOTICE that upon the summons and complaint dated December 20, 1976, and the accompanying Memorandum of Law in support of defendant Drug Abuse Control Commission of the State of New York's Motion to Dismiss, the undersigned will move this Court before Judge Frankel at Courtroom 519, United States Courthouse, Foley Square, City of New York, on the 10th day of March, 1977, on submission, for an order pursuant to Rule 12(b)(1), (2), and (6) of the Federal Rules of Civil Procedure, dismissing the plaintiff's complaint on the grounds of lack of jurisdiction over the subject matter, lack of jurisdiction over the person, and failure to state a claim upon which relief can be granted, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 23, 1977

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York

R.

DOCUMENT IV

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALBERT A. CORIOU, :

Plaintiff, :

-against- : 76 Civ. 5652
Pro Se

FEDERATION OF THE HANDICAPPED and :
DRUG ABUSE CONTROL COMMISSION OF THE
STATE OF NEW YORK, :

Defendants. :

----------X

MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT DRUG ABUSE CONTROL
COMMISSION OF THE STATE OF NEW
YORK'S MOTION TO DISMISS

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant
Office and P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3443

ALLAN SCOTT MOLLER
Assistant Attorney General
Of Counsel

2/23/77

Document IV

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ALBERT A. CORIOU, :

Plaintiff, :

-against- : 76 Civ. 5652
Pro Se

FEDERATION OF THE HANDICAPPED and :
DRUG ABUSE CONTROL COMMISSION OF THE
STATE OF NEW YORK, :

Defendants. :

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK'S MOTION TO DISMISS

Statement

This action is brought against the Federation of the Handicapped and the Drug Abuse Control Commission of the State of New York (hereinafter referred to as D.A.C.C. or the State of New York). This memorandum is submitted by defendant State of New York in support of its motion to dismiss this civil rights action commenced pursuant to 42 U.S.C. §§ 2000e-5 and 2000e-5(g).

Plaintiff alleges that defendants unlawfully conspired to violate his rights as secured under Title VII of the Civil Rights Act of 1964, in that defendant State of

Document 10

New York, a former employer, gave the Federation of the Handicapped, a prospective employer, an unfavorable recommendation concerning plaintiff's former employment with the State of New York, and that said allegedly unfavorable recommendation constituted on the part of the State of New York a discriminatory act on the basis of plaintiff's religion and national origin. Plaintiff therefore seeks that all fees, costs and security attendant upon the litigation be waived, that the Court appoint legal counsel, and that the Court grant such other relief as may be appropriate, including injunctive orders and damages. This motion is made pursuant to Rules 12(b)(1), (2), and (6) of the Federal Rules of Civil Procedure on the grounds that the Court lacks jurisdiction over the subject matter and over defendant State of New York and that the complaint fails to state a claim upon which relief can be granted as to said defendant.

Facts

Plaintiff alleges that he answered an advertisement which defendant Federation of the Handicapped placed in The New York Times on November 17, 1975, which advertisement stated that the Federation was seeking an Industrial Arts graduate to work in a vocational rehabilitation program. Plaintiff responded to the advertisement and was interviewed for the position by Mr. Charles Schepp on November 26, 1975. Plaintiff claims that

DOCUMENT 10

he was well--qualified for the job and that Mr. Scheps evidenced considerable interest in him at that particular interview and indicated that plaintiff would probably be contacted for a second interview, but that, as it turned out, plaintiff did not have a second interview and that, on December 17, 1976, he received a letter of rejection.

Plaintiff claims that the Federation of the Handicapped refused to employ him on the basis of plaintiff's religion and national origin, and charges were brought against the said Federation before the Equal Employment Opportunity Commission on January 8, 1976, and before the New York City Human Rights Commission on January 26, 1976. The Human Rights Commission conducted an investigation and concluded that there was no probable cause to believe that the charges were true and dismissed the complaint on April 30, 1976. Plaintiff appealed and the finding of the Commission was affirmed on August 13, 1976.

At no time during the proceedings before the New York City Human Rights Commission or before the Equal Employment Opportunity Commission were charges brought against the State of New York or The Drug Abuse Control Commission.

However, plaintiff claims that he did not bring charges against the State of New York Drug Abuse Control Commission

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because he was unaware that the Commission had supplied an allegedly unfavorable employment reference to the Federation of the Handicapped until the time when he appeared at the investigation before the New York City Human Rights Commission.

Even after he became aware of the aforementioned reference, plaintiff did not bring charges against the State of New York. Contained in the findings of the New York City Human Rights Commission of August 18, 1976, affirming its earlier ruling of April 30, 1976, is the statement that there is no evidence that plaintiff at any time questioned the accuracy of his former employer's recommendation at the time of the investigative conference.

On November 26, 1976, the Equal Employment Opportunity Commission issued a notice of right to sue, letter to plaintiff, stating that the charges had been dismissed for no probable cause, but that plaintiff had a right to sue respondent in the United States District Court within ninety days.

Thereafter plaintiff brought an action against the Federation of the Handicapped and the Drug Abuse Control Commission on December 26, 1976. It was in this proceeding that the State of New York was made a party for the first time.

DOCUMENT IV

POINT I

THE COMPLAINT MUST BE DISMISSED AS TO DEFENDANT DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK (D.A.C.C.) SINCE A PREREQUISITE TO THE BRINGING OF A CIVIL SUIT AGAINST A DEFENDANT UNDER TITLE VII IS THAT THE DEFENDANT BE NAMED AND CHARGED BEFORE THE E.E.O.C. PRIOR TO THE BRINGING OF SUCH SUIT, AND SINCE PLAINTIFF HAS FAILED TO DO SO, THE STATUTORY REQUIREMENTS OF TITLE VII HAVE NOT BEEN MET.

Title VII of the Civil Rights Act of 1964 provides specific statutory remedies to individuals who claim that they have been unlawfully discriminated against by employers or prospective employers on the basis of such individual's race, color, religion, sex, or national origin. However, in order for such individuals to receive relief, they must follow specified procedures contained in the act.

Section 2000e-5, 42 U.S.C., is the specific enforcement provision of the act. It provides that an aggrieved party shall file charges with the Equal Employment Opportunity Commission within a specified time of the alleged discriminatory act, and that the Commission shall then proceed to make an investigation and determination on its own, or refer to the appropriate state or local agency for their initial determination, according to state or local law.

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Whereas subdivision (e) provides that charges shall be filed within a specified time, subdivision (f) states, in relevant part, that:

> "If a charge filed with the Commission pursuant to subsection (b) of this Section is dismissed by the Commission, ... The Commission ... shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge by the person claiming to be aggrieved...."

Therefore, the statute specifically requires under 42 U.S.C. § 2000e-5(f)(1) that Title VII employment discrimination suits only be permitted "against the respondent named in the charge" before the E.E.O.C. . See LeBeau v. Libby-Greens-Food Company, 484 F. 2d 798 (1973), where a sex discrimination action was brought by women employees against the employer, the international union, and the local union. The United States Court of Appeals of the Seventh Circuit affirmed the decision of the United States District Court to dismiss the suit against the international union on the grounds that it was not named as a respondent before the E.E.O.C., holding at p. 799 that:

> "None of the complainants before the E.E.O.C. named the International Union as a respondent and that Union never appeared or participated before the Commission. Title VII employment dis-

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> crimination suits are permitted only 'against the respondent named in the charge' before the E.E.O.C. 42 U.S.C. § 2000e-5(f)(1). This policy decision is based on the Congressional purpose of encouraging conciliation and voluntary settlements of disputes and is supported by a long line of case authority." Cases omitted.

The United States District Court for the Eastern District of Louisiana reached a similar holding in Mondy v. Crown Zellerbach Corporation, 271 F. Supp. 258 (1967), where certain plaintiffs did not file charges against the E.E.O.C. before coming into court:

> "The Court agrees with defendant's contention (that the suit be dismissed). 42 U.S.C.A. § 2000e-5(e) clearly states that an aggrieved party may bring suit after having filed a charge with the Commissioner and receiving statutory notice from that body. If the creation of the E.E.O.C. has any significance at all, an aggrieved party wishing to obtain relief under Title VII cannot be permitted to bypass the Commission. Title VII is entirely constructed around the creation of the E.E.O.C., and a decision that the Commission can be ignored by a person proceeding under this Title would be a complete distortion of law."

See also The United States Court of Appeals of the Eighth Circuit decision of June 16, 1972, in the case of Local 179, United Textile Workers of America, AFL-CIO, v.

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Federal Paper Stock Company, 461 F. 2d 849, where the court stated at p. 850:

> "A review of the massive litigation under the Act discloses vigorous assertion by employers of numerous technical defenses involving procedural noncompliance with the above process. The courts in nearly all cases have refused to uphold such defenses. It is now settled, however, that a complaining party must satisfy two jurisdictional prerequisites in order to bring suit under Title VII: (a) a charge must be filed with the E.E.O.C. and (b) statutory notice from the E.E.O.C. of the right to sue must be received."

Therefore, since the plaintiff has failed to bring before the E.E.O.C. its charges against the State of New York under procedures mandated by Title VII of the Civil Rights Act of 1964, it has failed to meet the jurisdictional prerequisite to bringing a civil action against the State of New York, and the suit against the State should be dismissed.

POINT II

PLAINTIFF HAS FAILED TO MEET THE STATUTORY TIME PERIOD FOR FILING CHARGES WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (E.E.O.C.) AND THEREFORE THE COMPLAINT AGAINST THE STATE OF NEW YORK (D.A.C.C.) MUST BE DISMISSED.

Assuming, arguendo, that plaintiff has the right to sue a party under Title VII without first bringing charges

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before the Equal Employment Opportunity Commission, even in such a case plaintiff is governed by the statutory limitations imposed thereat, and since plaintiff has failed to bring suit within the prescribed time, the complaint must be dismissed as to defendant State of New York.

The alleged act of discrimination by the State of New York occurred when plaintiff's employment with the New York State Drug Abuse Control Commission was terminated, effective March 27, 1974. However, plaintiff failed to take any steps against the State at that time and waited until December 20, 1976, to bring the instant action against Federation of the Handicapped and the Drug Abuse Control Commission of the State of New York in the United States District Court for the Southern District of New York.

The time in which to bring such a suit against the State of New York has clearly expired under subdivision (e) of 42 U.S.C. § 2000(e)-5. Under that subdivision, charges must be filed with the E.E.O.C. within 180 days after the alleged discriminatory practice occurred, except that if a state or local agency takes jurisdiction of the initial proceedings, the charge must be filed with the E.E.O.C. within

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300 days of the alleged violation, or 30 days after the state or local subdivision has reached a determination, whichever is sooner.

Even assuming the 300 day time limitation were applicable in this case, plaintiff's time to bring charges before the E.E.O.C. would have expired on or about January 21, 1975, approximately two years prior to the time suit was actually brought in the court.

Furthermore, a jurisdictional prerequisite to bringing suit in District Court is that complainant must have filed timely charges before the E.E.O.C. "The statutory period for filing constitutes, in effect, a limitation by Congress on the right to proceed before the E.E.O.C. or in a subsequent suit in District Court. Gordon v. Baker Protective Services, Inc., 358 F. Supp. 867, at 868 (1973)."

In McCarty v. Boeing Co., 321 F. Supp. 260 (D.C. Wash. 1970), plaintiff alleged that retirement payment benefits were discriminatory on the basis of sex. The Court held, at page 261, that:

> "For jurisdiction to exist, there must have been compliance with the statutory prerequisites of 42 U.S.C. § 2000e-5, one of which is that plaintiffs must have

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> filed their charges of unlawful unemployment practices with the ... Commission ... within ninety days after the alleged discriminatory acts occurred." (Time period since amended).

The Court continues:

> "To hold otherwise would disregard the purpose of the statutory limitation, namely, to protect persons from being surprised through revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared."

See, also, Moore v. Sunbeam Corp., 459 F. 2d 811 (1972), compliance with time limitation for invoking administrative remedy is jurisdictional, Choate v. Caterpillar Tractor Co., 402 F. 2d 357 (1968), the requirement that a complainant must invoke the administrative process within the time limitations set forth in the act is a jurisdictional precondition to the commencement of a court action, and Macklin v. Spector Freight Systems, Inc., 472 F. 2d 979 (1973).

Finally, the allegedly discriminatory act occurred at the time that plaintiff's employment was terminated with the Drug Abuse Control Commission, on March 27, 1974, not at the time, almost 2 1/2 years later, when said Drug Abuse Control Commission allegedly sent an unfavorable employment reference to the Federation of the Handicapped concerning the Commission's employment experience with plaintiff.

p9

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If plaintiff felt that he had been unfairly treated in violation of law, his remedy was to bring charges against the State at the time of his termination, not 2 1/2 years later on the basis of an alleged unfavorable employment reference.

In order for an aggrieved party to successfully bring charges two or three years subsequent to the discriminatory act, said act must be of a continuing nature. Macklin v. Spector Freight Systems, Inc., supra; Cox v. United States Gypsum Company, 409 F. 2d 289 (1969).

But when there is only one such act, the time begins to run at the time when said violation occurred McCarty v. Boeing Co., supra. Furthermore, it has been held in the Eighth Circuit that a discharge from employment is not a "continuing" violation that operates as a bar to the application of the applicable limitations period for filing charges.

> "For a former employee the date of discharge or resignation is the controlling date under the statute, and a charge of employment discrimination must be timely filed in relation to that date ....
>
> Termination of employment either through discharge or resignation is not a 'continuing' violation. It puts at rest the employment discrimination because the individual is no longer an employee." (Emphasis supplied). Olson v. Rembrandt Printing Co., 511 F. 2d 1228, at 1234 (1975).

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Therefore, plaintiff has not met the jurisdictional requirements for bringing an employment discrimination suit, by failing to bring charges within the time prescribed by statute.

CONCLUSION

THE COMPLAINT SHOULD BE DISMISSED IN ALL RESPECTS AS TO DEFENDANT DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK.

Dated: New York, New York
February 23, 1977

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant

ALLAN SCOTT MOLLER
Assistant Attorney General
Of Counsel

2/27

11.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ALBERT A. CORIOU, :

Plaintiff, Pro Se :

-against- :

FEDERATION OF THE HANDICAPPED : INDEX #76 CIV 5652

and :

DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK, :

Defendants. :

----------X

PLAINTIFF'S REPLY BRIEF TO DEFENDANT DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK'S MOTION TO DISMISS

ALBERT A. CORIOU
Plaintiff, Pro Se
P.O. Address:
94-26 34th Road
Jackson Heights
New York 11372
(212) 457-4478

APPEAL DOCUMENT # XIII

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALBERT A CORIOU,	
Plaintiff, Pro Se	
-against-	
FEDERATION OF THE HANDICAPPED	INDEX # 76 CIV 5652
and	
DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,	
Defendants.	

PLAINTIFF'S REPLY BRIEF
TO DEFENDANT DRUG ABUSE
CONTROL COMMISSION OF THE
STATE OF NEW YORK'S MOTION TO DISMISS

Rebuttal

This memorandum of rebuttal is submitted in reply to defendant's memorandum to dismiss dated February 23, 1977.

The substantive issue of this proceeding is the legality, propriety and validity of a former employer to participate in the disqualification of an applicant for alternative employment pursuant to a preliminary determination by the prospective employer that no circumstances in said applicant's background prevailed as contributing factors to his rejection. (Federation letter of rejection dated December 17, 1975, complaint papers)

None of the discrimination cases cited by counsel are applicable to this species of invidious conspiracy to obstruct the employment of the Plaintiff.

In point of fact, not only was the Plaintiff herein denied the employment for which he was well qualified but the reasons therefor were so well concealed by his adversaries that they would never have been made apparent had he failed to file the instant discrimination action.

Moreover what the Attorney General is arguing in this assiduous effort at ridding the state of accountability in this matter, is that while the statute of limitations against which to file an action with the EEOC may have expired, his client's option to file continuous unfavorable employment references with prospective employers has not nor will it ever expire without a court order; but to conclude that there is only one act of alleged discrimination beginning with Plaintiff's termination from state employment on March 27, 1974 which exempts it from accountability is to improperly refute the fact situation presented in support of the state's role as a defendant.

Charges have not been brought "two or three years subsequent to a discrimination act" as counsel erroneously alleges (Page 12, Par I, MEMO TO DISMISS) but pursuant to disclosure in this regard at the city commission hearing and notification of right to sue. As such the discriminatory act is of a continuing nature subject to remedy the misleading claims of counsel to the contrary notwithstanding.

Plaintiff takes the position that the state in actively injecting itself into the proceedings by concocting an unfavorable employment reference to bolster the federation's rejection of his employment became a voluntary party to the action for which it now must be held accountable and answerable or he will forever be the victim of its arbitrary and continuous condemnation of prior employment with them which is detrimental to a livlihood.

If a determination in this matter is to be based solely on the issue of whether or not a timely action was brought

against them before the EEOC, under the circumstances, then the merits will have forever been subordinated to self serving technicalities, Plaintiff will have been denied the right to effectively rebut the content of the adverse employment reference at issue and a form of invidious affirmative discrimination allowed to flourish with impunity.

Plaintiff will therefore move for waiver of the jurisdictional prerequisites as set forth by counsel in this matter as inapplicable to the unique circumstances herein and that they be directed to file an answer on the merits.

POINT I REBUTTAL

PLAINTIFF HAD NO KNOWLEDGE THAT THE STATE OF NEW YORK WAS A PARTY TO THE ACTION HEREIN UNTIL AN UNFAVORABLE EMPLOYMENT REFERENCE WAS PRODUCED BUT NOT DISCLOSED AT A HEARING BEFORE THE CITY COMMISSION ON HUMAN RIGHTS WHICH THE FEDERATION RELIED UPON IN SUPPORT OF ITS DISQUALIFICATION OF PLAINTIFF FOR EMPLOYMENT AND PURSUANT TO THE ACTION FILED BEFORE THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. IT WAS THEREFORE NOT BINDING ON PLAINTIFF TO FILE A DISCRIMINATION ACTION WITH THE EEOC AGAINST AN AGENCY WHICH HAD NOT DISCLOSED ITS ROLE IN THE PROCEEDINGS UNTIL A SUBSEQUENT TIME AT THE CITY COMMISSION HEARING IN ORDER TO MEET THE STATUTORY REQUIREMENTS SET FORTH BY COUNSEL

Counsel claims in page 5 of the memo to dismiss that in order for a Plaintiff to receive relief pursuant to Title VII of the Civil Rights Act of 1964 they must follow specific procedures contained in the act and would therefore have us believe that just as soon as the unfavorable employment reference at issue was displayed and identified as such over the hearing table by Program Coordinator Scheps, while systematically withholding the content, Plaintiff should have immediately run to file a separate action with the EEOC, based upon conjecture as to content, against the state to confirm it as a party to the proceedings. This fatuous;

in the first place such procedure would have entailed two seperate, fragmented and unmanageable actions which would have eventually had to be joined and in the second place Plaintiff was not at liberty to effectively refute the merits of evidence not made available. One of the major purposes of this action is to direct these respondents to surrender said evidence for consideration by the court in a discrimination proceeding. There is no need or requirement for a separate action before the EEOC to achieve this legitimate purpose and the procedural deficiencies of cases cited in support of alleged failure to meet jurisdictional prerequisites do not apply here.

POINT II REBUTTAL

SINCE THE DATE OF INITIAL DISCRIMINATION BY THE STATE IS IDENTICAL TO THE DATE OF THE CITY COMMISSION HEARING AT WHICH THE UNFAVORABLE REFERENCE WAS ENTERED, TO WIT, ON OR ABOUT FEBRUARY 23, 1976 AND THERE WAS NO EVIDENCE OF DISCRIMINATION PRIOR THERETO BY THE STATE IN THIS MATTER, COUNSEL'S CLAIM OF FAILURE TO MEET THE STATUTORY TIME PERIOD FOR FILING CHARGES WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS PREREQUISITE TO BRINGING AN EMPLOYMENT DISCRIMINATION SUIT IS TOTALLY WITHOUT MERIT.

The fundamental error of fact with respect to the arguement concerning failure of Plaintiff to file a timely action with the EEOC is that the alleged act of discrimination by the state of New York occurred when his employment with the state terminated effective March 27, 1974 (Page 9, Par 2 and Page 11, Par 4, MEMO TO DISMISS) In point of fact the initial act of discrimination occurred on or about February 23, 1976, the date of hearing before the City Commission on Human Rights, when the adverse employment reference of the state was entered into evidence by the Federation of the Handicapped. It was

at this time that the state became a party to the action, counsel's assertion to the contrary notwithstanding.(Report of hearing before Magistrate Schreiber, February 15, 1977, Page 4, lines 9 through 15)

The statutory notice of right to sue in this matter also encompassed the right to sue the state inasmuch as it established its clear role in the disqualification of the Plaintiff from employment. It would never have become a party to the action had it refrained from issuing a negative assessment of prior employment which the Federation relied upon to reject the Plaintiff.

A Plaintiff is entitled to cite co-conspirators to his employment disqualification when an active role in this regard has been established and this exactly what was done in the instant action when it became apparent that the Federation was not acting alone in rejecting Plaintiff's employment.

The fundamental reason a conspiracy between the Federation and the state prevails in this matter contrary to denials of the adverse parties is that it is only when an action was initiated before the City Commission on Human Rights that a letter of unfavorable employment reference was hastily concocted and served up by the Federation in support of their rejection of Plaintiff's candidacy where none had existed prior thereto side by side with the letter of rejection.

SUMMARY

Inasmuch as Attorney General of Counsel does not deny the existence or the issue of an adverse employment reference or letter of rejection in this matter concerning which both defendants are participants and that the state's negative assessment of prior employment was entered at a time subsequent to Plaintiff's termination from said employment on March 27, 1974, there is no justification for the motion to

dismiss upon the ground of failure to satisfy irrelevant and immaterial procedural technicalities in a systematic effort to evade an answer on the merits.

It must be emphasized that the State of New York was not a party to the action until it voluntarily injected itself into the proceedings by unfavorable employment reference and is not charged in isolation but as part of an invidious conspiracy of parties to demolish the career and livlihood of the Plaintiff. Moreover, the arguement that he waited 2½ years to initiate an action, etc. (Page 12, Par I, MOTION TO DISMISS) which vitiates his claim against the state is totally without merit in these circumstances. The discrimination is therefore of a continuing nature, counsel's assertions to the contrary notwithstanding. The state has been established as a legitimate and voluntary party to the action and therefore an answer should be required on the merits.

In addition to the disqualification sought on grounds of prejudice pursuant to affidavit and motion of February 22, 1977, Plaintiff will also move this court for disqualification upon the ground that the judiciary law of the State of New York, section 478 specifically prohibits an individual not admitted to lawful practice to act as attorney in court for someone other than himself. Inasmuch as Assistant Attorney General of Counsel is not acting in his own behalf he is also subject to disqualification in this regard.

CONCLUSION

MOTION FOR DISMISSAL ON GROUNDS OF FAILURE TO SATISFY JURISDICTIONAL PREREQUISITES SHOULD BE DENIED AND RESPONDENT STATE DIRECTED TO FILE AN ANSWER ON THE MERITS AS A LEGITIMATE DEFENDANT AND PARTY TO THE ACTION.

Dated: Jackson Heights, N.Y.
February 29, 1977

Respectfully Submitted,

Albert A Coriou

Albert A. Coriou,
Plaintiff, Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BKS
pl/14
wit Scheps
July 20, 1977

ALBERT A. CORIOU,

Plaintiff,

-against-

FEDERATION OF THE HANDICAPPED and DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,

Defendants.

---

76 Civ. 5652 (MEF)

ANSWER OF DEFENDANT FEDERATION OF THE HANDICAPPED

Defendant, FEDERATION OF THE HANDICAPPED ("Federation") by its attorneys, Winer, Neuburger & Sive, answers plaintiff's complaint herein as follows:

FIRST DEFENSE

FIRST: Neither admits nor denies the allegations contained in paragraph 1 of the complaint, as they attempt to state conclusions of law, but if required to answer, defendant would deny each and every such allegation.

SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 of the complaint.

THIRD: Admits the allegations contained in paragraph 4 of the complaint, except denies that plaintiff was ever employed by Federation.

FOURTH: Admits the allegations of paragraphs 6 and 7 of the complaint, except denies knowledge or information sufficient to form a belief as to the allegations in said paragraphs respecting the date plaintiff filed charges with the New York City Human Rights Commission and the Equal Employment Opportunity Commission.

ARTHUR KILL COMMUNITY REHABILITATION CENTER
2911 ARTHUR KILL ROAD STATEN ISLAND, NEW YORK 10309 PHONE (212) 356-7333

FIFTH: Admits the allegations of paragraph 8 of the complaint, except denies that the Notice of Right to Sue letter was received by Federation on November 26, 1976.

SIXTH: Denies each and every allegation contained in paragraphs 5, 10, 11, 13 and 14 of the complaint.

SEVENTH: Denies each and every allegation contained in paragraph 9 of the complaint, except admits that Federation sent plaintiff a letter dated December 17, 1975, a copy of which is annexed as an exhibit to the complaint.

EIGHTH: Denies each and every allegation contained in the "Charge of Discrimination" to the Equal Employment Opportunity Commission annexed to paragraph 12 of the complaint, except admits that it ran an advertisement in the New York Times on or about November 17, 1975 for the position of evaluator; that it received a resume from plaintiff; that it requested plaintiff to appear for an interview for said position; that plaintiff was interviewed on or about November 26, 1976; that at said interview plaintiff was advised of the possibility of a further interview with the Director of Rehabiliative Services; that Federation ran a second advertisement for the same position in the New York Times on or about November 30, 1975; that by letter dated December 17, 1975 Federation informed plaintiff that he would not be hired by defendant.

SECOND DEFENSE

NINTH: The Court lacks jurisdiction over the subject matter of the claim for relief.

THIRD DEFENSE

TENTH: The complaint fails to state a claim upon which relief can be granted.

DOCUMENT VIII

FOURTH DEFENSE

ELEVENTH: Plaintiff has failed to exhaust his administrative remedies in that the allegations of conspiracy contained in paragraph 9 of the complaint were not the subject matter of any administrative proceeding.

FIFTH DEFENSE

TWELFTH: Plaintiff's claim for relief is not ripe for adjudication.

SIXTH DEFENSE

THIRTEENTH: Insofar as plaintiff's claim for relief is predicated upon the allegations of conspiracy contained in paragraph 9 of the complaint, it is barred by the statute of limitations, 42 U.S.C. §2000e-5(e).

SEVENTH DEFENSE

FOURTEENTH: The plaintiff, Albert Coriou, was afforded the same opportunity for employment as an evaluator with Federation as other applicants for that position, and he was not discriminated against on the basis of his religion or national origin or any other invidious ground.

EIGHTH DEFENSE

FIFTEENTH: The plaintiff, Albert Coriou, was not offered the position of evaluator with Federation because of an adverse recommendation from a former employer.

NINTH DEFENSE

SIXTEENTH: The plaintiff, Albert Coriou, filed a complaint with the New York City Commission on Human Rights on

or about January 26, 1976. Thereafter, on or about April 30, 1976, the Commission found no probable cause, and that determination was affirmed by the Chairman of the Commission on or about August 13, 1976. No judicial review was taken from that decision.

TENTH DEFENSE

SEVENTEENTH: The plaintiff, Albert Coriou, filed a charge with the Equal Employment Opportunity Commission on or about January 8, 1976. Thereafter, on or about November 26, 1976, the Equal Employment Opportunity Commission found no reasonable cause to believe the charge was true.

ELEVENTH DEFENSE

EIGHTEENTH: Federation is not a proper defendant in this action as the alleged acts complained of in paragraph 9 of the complaint were not undertaken by said defendant.

TWELFTH DEFENSE

NINTEENTH: Plaintiff's complaint is a sham and frivolous.

WHEREFORE, defendant, FEDERATION OF THE HANDICAPPED, prays for judgment dismissing the complaint herein, an award of costs and reasonable attorneys' fees, and for such other and further relief as this Court may deem appropriate and just.

Dated: New York, New York
March 1, 1977

WINER, NEUBURGER & SIVE
Attorneys for Defendant
FEDERATION OF THE HANDICAPPED

By _____
A Member of the Firm
425 Park Avenue
New York, New York 10022
(212) 421-2150

Document VIII

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RXJ
plfs E16
July 20, 1977
Schepe

ALBERT A CORIOU,

Plaintiff, Pro Se

-against-

FEDERATION OF THE HANDICAPPED AND DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,

Defendants

INDEX # 76 CIV 5652

REBUTTAL TO ANSWER OF DEFENDANT

Replying to thesecond defense, subject matter and claim for relief fall squarely within the court's jurisdiction for which it is empowered to rule.

Replying the the third defense, Plaintiff has filed his request with the court for relief by directive to the defendants for employment to be made available and for all other relief which the court may deem just and proper on the premises.

Replying to the fourth defense, no administrative remedies are at issue since Plaintiff was not employed or affiliated with any of the agencies at the time of commencement of the instant discrimination suit. The statement is therefore self-serving, invalid and immaterial.

Replying to the fifth defense, Plaintiff has filed a timely action before the Equal Employment Opportunity Commission and City Commission on Human Rights in this matter and has adhered to all the statutory prerequisites for proper filing of a legitimate action. Therefore the claim of "relief not ripe for adjudication" is totally without merit.

Replying to the sixth defense, there is no statute of limita-

tions applicable where the nature of the discrimination actions are continuous as have been established herein, therefore the sixth defense is also without merit.

Replying to the seventh defense, the evidence will demonstrate the contrary to be true notwithstanding the self serving general denials submitted in support.

Replying to the eighth defense, the report of the determination and order of the City Commission on Human Rights dated August 13, 1976 specifically states: "The subsequent check, at which time respondents received an unfavorable employment reference from a previous employer, caused them to eliminate complaintant from actual consideration", in which case the denial in this regard clearly establishes their preference for the Judaic in their hiring practices having employed who if not a Marvin Borenstein by their own admission. For what other reason than an adverse reference could there then be for the disqualification at issue. The eighth defense is therefore a clear fraud on the face.

The ninth defense is fatuous inasmuch as the instant action constitutes the appropriate judicial review.

The tenth defense fails to acknowledge Plaintiff's statutory right to sue notwithstanding any adverse finding of the EEOC in addition to which action before such agency is prerequisite to any subsequent action in federal court.

The eleventh defense constitutes a general denial of accountability in this matter which improperly refutes the fact situation that establishes the defendant Federation as a legitimate party to the action.

If it a sham and frivolous for an aggrieved to embark upon the

proper steps to protect his legitimate career and livlihood from the arbitrary and illegal condemnation of a prior employer (Twelfth defense) in conspiracy with a prospective employer, counsel is no doubt correct, however the circumstances herein will demonstrate and substantiate the validity of Plaintiff's action and motion for relief contrary to the protests of adverse parties.

Defendants do not deny the existence of a letter of employment rejection dated December 17, 1975 in this matter (First Defense, Item 7, Page 2) what they fail to justify is the relationship of such rejection, which carries with it no adverse factors in Plaintiff's background, to the claim of adverse employment reference if indeed they have acknowledged such reference at all. In any event Defendant Federation must be a party to the action to substantiate their status as equal opportunity employer under the circumstances which remains as yet to be done.

Wherefore Plaintiff moves for denial of petition for dismissal of the complaint with recovery of costs and other relief as specified.

Dated: Jackson Heights
New York
March 3, 1977

Albert A Coriou

ALBERT A. CORIOU,
PLAINTIFF, PRO SE

Albert A Coriou

94-26 34 th Road

Jackson Heights New York 11372

March 8, 1977

Winer, Neuberger and Sive
Attorneys for Defendant
Federation of the Handicapped
425 Park Avenue
New York, N.Y. 10022

Re: Matter of Albert A. Coriou, Plaintiff Pro Se

V.

Federation of the Handicapped
and
Drug Abuse Control Commission
of the State of New York

Index # 76 CIV 5652, MEF

Gentlemen:

Pursuant to your request at a hearing in the foregoing matter for a copy of Plaintiff's reply brief to defendant Drug Abuse Control Commission of the State of New York's motion to dismiss, please find herewith enclosed the copy of same.

As a matter of law and in accordance with the court's articulation of the right of parties in litigation to disclosure of pertinent evidentiary matter, I respectfully ask that copies of adverse employment references, if any, which are alleged to have been disqualifying factors in Plaintiff's employment be forwarded at your earliest convenience.

Please advise.

Very Truly Yours,

Albert A Coriou

Albert A. Coriou,
Plaintiff Pro Se

ac:ss
Encl

CHEPTOK

421-2150

8

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

STATE OF NEW YORK
DEPARTMENT OF LAW
TWO WORLD TRADE CENTER
NEW YORK, N.Y. 10047
TELEPHONE 488-3385

March 9, 1977

Re: 77 Civ. 42 Pro Se
Albert A. Coriou v. Federation of the Handicapped and Drug Abuse Control Commission of the State of New York

Honorable Judge Frankel
United States Court House
1 Foley Square, Room 2003
New York, New York 10007

Dear Judge Frankel:

I represent the Defendant Drug Abuse Control Commission of the State of New York in the above-captioned matter and, in connection therewith, filed a Memorandum of Law in Support of Defendant Drug Abuse Control Commission's Motion to Dismiss on February 23, 1977.

On page seven of said memorandum I cited the case of Mondy v. Crown Bellerbach Corporation, 271 F. Supp. 258 (1967), but inadvertently failed to note that it had been reversed on other grounds 398 F.2d 496 (5th Cir. 1968).

The reversal was on the grounds that when one or more parties have properly brought charges before the E.E.O.C. or other administrative body prior to bringing a civil action in federal court, other injured parties, if part of the same class, can join the plaintiffs in the civil action, although they have not previously brought charges against the defendant before the E.E.O.C.

Judge Frankel
Re: 77 Civ. 42 Pro Se
Albert A. Coriou v. Federation of
Handicapped and Drug Abuse Control
Commission of the State of New York

March 9, 1977

----------2

This holding does not change established case law requiring a defendant to be properly charged before the E.E.O.C. prior to being brought into court.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General
By

AM:NH

ALLAN MOLLER
Assistant Attorney General

cc: Clerk of the Court
Southern District of New York
Albert A. Coriou, Plaintiff Pro Se
Winer, Neuburger & Sive, Attorneys for Defendant
Federation of the Handicapped

94-26 34th Road
Jackson Heights
New York 11372
March 12, 1977

Hon. Marvin E. Frankel
Judge of the United States
District Court
1 Foley Square
New York, N.Y. 10007

Re: Index # 76 Civ 5652
Albert A. Coriou V.
Federation of the Handicapped
and
Drug Abuse Control Commission
of the State of New York

REPLY TO MEMORANDUM OF DEFENDANT STATE
DATED MARCH 9, 1977

SIR:

Because Plaintiff is entitled to cite co-conspirators to his employment disqualification as they become known in the course of the ordinary charging process and as part of lawful disclosure of pertinent evidentiary matter, the arguement that Defendant State of New York was not properly charged in this matter and should therefore be relieved is totally without merit.

Since when is an employee terminated from his employment bound by a multiplicity of law suits within a specified time simply to protect his right to alternative employment which t he State of New York is systematically obstructing at this time?

Clearly this is a case where the defendants must be joined in the interest of justice if Plaintiff is ever to be freed of the pernicious conspiracy to obstruct his livlihood as has been well documented in the initial complaint and bolstered by arguements in rebuttal.

I ask that the irrelevant application of decisional law such as Mondy V. Crown Zellerbach Corp., etc., be ruled inadmissable and inapplicable to the pertinent circumstances of this matter.

Respectfully Submitted,

Appeal Document
IV

Albert A Coriou

Albert A. Coriou,
Plaintiff Pro Se

cc: Defendants

7 1/28/77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOCUMENT VII

ALBERT A. CORIOU,	:	
Plaintiff,	:	
-against-	:	
FEDERATION OF THE HANDICAPPED and DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,	:	PRO SE 76 Civ. 5652
Defendants.	:	MEMORANDUM

FRANKEL, D.J.

Resisting the motion to dismiss on each of its asserted grounds, the plaintiff places primary reliance upon his claim that the defendant Commission committed (or repeated) its actionable wrong when it wrote an adverse letter concerning his employment record to the co-defendant Federation. In addition, the plaintiff asserts that he never learned of this letter until the state hearing in February of 1976.

In order to make any judgment about the validity of the plaintiff's position, the court should be supplied with a copy of the letter, upon which he relies, from the Commission to the Federation. Accordingly, the Commission is directed to supply the court with such a copy. It is recognized, of course, that this is a somewhat informal way of proceeding. Nevertheless, having regard for the fact

that plaintiff is acting pro se, the court deems it permissible and advisable to have an account of the pertinent facts before ruling on the pending motion to dismiss.

MARVIN E. FRANKEL

Dated, New York, New York
March 29, 1977

U.S.D.J.

DOCUMENT 14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALBERT A. CORIOU,

Plaintiff,

-against-

FEDERATION OF THE HANDICAPPED and DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,

Defendants.

RESPONSE OF DEFENDANT FEDERATION OF THE HANDICAPPED TO PLAINTIFF'S NOTICE TO PRODUCE

76 Civ. 5652 (MEF)

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendant Federation of the Handicapped hereby responds to the request to produce of plaintiff, set forth in plaintiff's letter to said defendant of March 8, 1977. Defendant has annexed hereto a copy of an adverse employment reference utilized in its decision not to employ plaintiff.

Dated: New York, New York
April 7, 1977

WINER, NEUBURGER & SIVE

By _____
A Member of the Firm
Attorneys for Defendant
Federation of the Handicapped

425 Park Avenue
New York, New York 10022
(212) 421-2150

TO: ALBERT A. CORIOU
Plaintiff, Pro Se
94-26 34th Road
Jackson Heights, New York 11372

ALLAN SCOTT MOLLER, ESQ.
Assistant Attorney General
Attorney for Drug Abuse Control Commission
of the State of New York
Two World Trade Center
New York, New York 10047

ARTHUR KILL COMMUNITY REHABILITATION CENTER
2911 ARTHUR KILL ROAD STATEN ISLAND, NEW YORK 10309 PHONE: (212) 356-7333

DOCUMENT IX

February 20, 1976

To Whom It May Concern:

Albert Coriou was terminated from his position as an Instructor at this facility due to the fact that he had problems relating to his students and was unable to accept proper supervision.

George Friedman

GF:is

George Friedman,
Education Director

DOCUMENT VIII

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALBERT A. CORIOU, Plaintiff,	76 Civ. 5652 (MEF)
-against-	NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION
FEDERATION OF THE HANDICAPPED and DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK, Defendants.	

S I R S :

PLEASE TAKE NOTICE that on the 22nd day of April, 1977, at 10:00 o'clock in the forenoon at the offices of Winer, Neuburger & Sive, 425 Park Avenue, 5th Floor, New York, New York 10022, the defendant, Federation of the Handicapped, in the above entitled action will take the deposition upon oral examination, pursuant to Rule 30 of the Federal Rules of Civil Procedure, of the plaintiff, Albert A. Coriou, whose address is 94-26 34th Road, Jackson Heights, New York 11372, before a notary public or other officer or persons authorized by law to administer oaths. The oral examination will proceed from day to day until completed. You are invited to attend and cross examine.

PLEASE TAKE FURTHER NOTICE that the above named plaintiff, Albert A. Coriou, whose deposition is being taken, is hereby notified to appear for said deposition, and pursuant to Rules 26, 30(b)(5) and 34 of the Federal Rules of Civil Procedure, to bring with him, to produce and permit defendant, Federation of the Handicapped, or someone acting on its behalf, to inspect and copy or photocopy all documents, not privileged, of any kind in the plaintiff's possession, custody or control, which relate in any way to (1) Defendant Federation of the Handicapped; (2) the allegations of the complaint herein; (3) the allegations made

by plaintiff to any agency of the State of New York with respect to the actions of Federation of the Handicapped including but not limited to the Division of Human Rights of the New York State Executive Department or New York State Human Rights Appeals Board; (4) the allegations made by plaintiff to the New York City Commission on Human Rights; (5) the allegations made by plaintiff to the United States Equal Employment Opportunity Commission; (6) all communications of any kind between the plaintiff and Federation of the Handicapped, its officers, agents or employees; (7) all allegations made by plaintiff to the New York State Department of Labor and/or New York State Unemployment Insurance Appeals Board respecting plaintiff's employment with the New York State Arthur Kill Community Rehabilitation Center, 2911 Arthur Kill Road, Staten Island, New York, and/or the United States Veteran's Administration Out-Patient Clinic, 35 Ryerson Street, Brooklyn, New York; (8) all communications of any kind between plaintiff and the New York State Arthur Kill Community Rehabilitation Center and/or the United States Veteran's Administration Out-Patient Clinic; (9) the reasons plaintiff left, resigned or was terminated from, any employment within the last 10 years; (10) plaintiff's qualifications for the position he sought with Federation of the Handicapped.

As used herein the term "document" refers to all types of recorded information including without limitation originals and typewritten, photostatic and other copies of correspondence, letters, telegrams, books, contracts, agreements, statements, invoices, notices, confirmations, work papers, data sheets, claims, stenographic or other notes, reports, intra-company communications, recordings, notebooks, plans, instructions, transcripts, summonses, writings, drawings, graphs, charts, photographs, phono-records, tapes and any other information or data records or compilations

Document VIII

from which information can be obtained or, if necessary, translated through detection devices into reasonable usable form, including all underlying supporting or preparatory material and drafts thereof.

Dated: New York, New York
April 8, 1977

Yours, etc.,

WINER, NEUBURGER & SIVE

By _____

A Member of the Firm
Attorneys for Federation of the Handicapped
Office and Post Office Address
425 Park Avenue
New York, New York 10022
(212) 421-2150

TO: ALBERT A. CORIOU
Plaintiff, Pro Se
94-26 34th Road
Jackson Heights, New York 11372

ALLEN SCOTT MOLLER, ESQ.
Assistant Attorney General
Attorney for Drug Abuse Control
Commission of the State of New York
Two World Trade Center
New York, New York

4

4/15/77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALBERT A CORIOU, Plaintiff, -against- FEDERATION OF THE HANDICAPPED AND DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK, Defendants.	BRIEF IN REPLY TO: RESPONSE OF DEFENDANT FEDERATION OF THE HANDICAPPED TO PLAINTIFF'S NOTICE TO PRODUCE. NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION. 76 Civ 5652 (MEF)

STATEMENT

1. Plaintiff refutes so much of the content of the adverse employment reference alleging termination from his position because of "problems relating to his students" and "inability to accept proper supervision". In point of fact, Plaintiff was illegally and improperly terminated from his employment without good cause and without a hearing which he was entitled to as a permanent employee, pursuant to Section 75 of the Civil Service Law of the State of New York.

   Moreover, this adverse employment reference is in direct contradiction to Defendant Federation's letter of rejection dated December 17, 1975 indicating that Plaintiff "should in no way feel that his background was lacking in any particular area". The fundamental deficiency in background however which Defendant Federation refuses to acknowledge has to do with the failure to satisfy the judaic criteria which this rejection is systematically intended to obscure.

   The accusations of problems with students and inability to accept supervision are therefore a malicious falsification of the fact situation constituting a breach of employee rights and a wanton act of invidious discrimination for which Plaintiff is entitled to damages.

   It is to be noted also that for purposes of denying Unemployment Insurance Benefits pursuant to separation, Plaintiff's employment with the state was arbitrarily characterized as a resignation without good cause, however for purposes of denying alternative employment, his services were terminated for alleged "problems with students and failure to accept supervision" (Sic, adverse reference) In either case Plaintiff is without a remedy at law.

2. With regard to the notification to appear for deposition at the date and time specified, please be advised that Plaintiff herein will decline said appearance upon the ground that it is predicated upon a self serving perversion and distortion of the Federal Rules of Civil Procedure which in effect subjects Plaintiff to trial before his adversaries, that all pertinent documentation requested is a matter of record before the court and the Attorney General of the State of New York, that Plaintiff's

employment history with the Brooklyn Veterans Administration Outpatient Clinic and 10 years prior thereto is immaterial and irrelevant to the substance of the complaint before the court, and, finally, that the request therefor is a totally inadequate substitute for an answer on the merits.

Plaintiff's employment history and other extraneous issues are not encompassed within the proceedings and are not the subject of trial here but least of all before the adverse parties. Their task is to effectively discredit the validity of circumstances and documentation presented in support of a charge of unlawful employment discrimination and to justify the lies advanced for the denial of employment which they have yet to address themselves to.

The only purpose of such an inquisition would be to improperly prolong this matter for illegitimate and invalid purposes, with harassment, to submerge the substantive issues in further fraud and slander for their own personal convenience which Plaintiff need not be a party to in the settlement of this case.

Wherefore Plaintiff moves for judgement with damages, costs and fees based upon the merits of substantial evidence on record.

Dated: Jackson Heights, New York
April 15, 1977

Yours, etc.,

Albert A Coriou

Albert A. Coriou,
Plaintiff Pro Se
94-26 34th Road
Jackson Heights
New York 11372

To: WINER, NEUBURGER & SIVE
Attorneys for the Federation
of the Handicapped
425 Park Avenue
New York, N.Y. 10022

ALLEN SCOTT MOLLER, ESQ.
Assistant Attorney General
Attorney for Drug Abuse Control
Commission of the State of New York
Two World Trade Center
New York, N.Y. 10047

AFFIDAVIT OF SERVICE

I ALBERT A CORIOU, Plaintiff Pro Se in this action of the foregoing address, declare under the penalties of perjury that I have served a copy of the within brief in reply by depositing same, properly enclosed in a post paid wrapper, in the post office letter recepticle regularly maintained at 33-23 Junction Boulevard, Corona, New York 11368, directed to Allen S. Koller and Winer, Neuburger and Sive Attorneys at Law at the addresses indicated within the states designated by them for that purpose or the place where they kept an office, between which places there then was and now is a regular communication by mail.

ATTEST,

ALBERT A. CORIOU,
Plaintiff Pro Se
Date: April 15, 1977

5/3/77

DOCUMENT X

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

ALBERT A. CORIOU, :

Plaintiff, : PRO SE 76 Civ. 5652

-against- :

FEDERATION OF THE HANDICAPPED and DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK, : MEMORANDUM

Defendants. :

- x

FRANKEL, D.J.

Plaintiff has sued both the Federation of the Handicapped and New York State's Drug Abuse Control Commission under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5, for employment discrimination on grounds of religion and national origin. The latter defendant has moved to dismiss.

It is undisputed that plaintiff's employment by the Commission was terminated effective March 27, 1974, and that he filed no charge about that with the Equal Employment Opportunity Commission either within the 180 days thereafter specified in 42 U.S.C. §2000e-5(e) or at any time since. As will appear, however, plaintiff seeks to rest his claims upon a letter written for the Commission long after his termination.

DOCUMENT X

Late in 1975 defendant sought employment with defendant Federation. When his application was rejected, he proceeded before both the EEOC and the New York City Human Rights Commission charging illicit discrimination. In the course of the City Human Rights Commission hearing, on February 23, 1976, there was presented a letter of the Drug Abuse Control Commission, dated February 20, 1976, reading as follows:

> "Albert Coriou was terminated from his position as an Instructor at this facility due to the fact that he had problems relating to his students and was unable to accept proper supervision."

This letter is asserted to ground plaintiff's claim against the Drug Abuse Control Commission. Again, however, there was no charge with the EEOC within 180 days or at any time.

After both the EEOC and the City Human Rights Commission had dismissed his charges, plaintiff brought the present action, on December 20, 1976, against both the Federation and the Drug Abuse Control Commission.

The effort to mount such a case upon the letter of February 20, 1976, cannot succeed. Obviously, the letter is not itself an act of discrimination within the meaning of Title VII or any other conceivably applicable law. Assuming arguendo the letter was false, it was false only because the termination two years earlier was unlawful, and plaintiff acknowledges in effect that this suit would not lie for that. To hold otherwise would make any limitations

DOCUMENT X

period infinitely extendable simply by seeking a new affirmation from the allegedly offending employer. Cf. National Labor Relations Board v. Childs Co., 195 F.2d 617 (2d Cir. 1952).

Furthermore, if the Drug Abuse Control Commission might be thought suable for what it did in February 1976, even then plaintiff neglected to go first to the EEOC. The mere assertion of a "conspiracy" between the Federation and the movant Commission does not repair that omission. Aside from the fact that there are no concrete allegations to make the charge of conspiracy seem meaningful even on its face, the movant was entitled to the protections and benefits of the administrative process interposed by Congress as a pre-condition to suit. If thereafter there might have been reason to add the movant, that could have been done in proper course. As matters stand, only the Federation has been sued in permitted fashion.

The motion is granted. The complaint is dismissed as against defendant Drug Abuse Control Commission. So ordered.

MARVIN E. FRANKEL

U.S.D.J.

Dated, New York, New York
May 3, 1977

10/17

* FILE ROA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ALBERT A CORIOU, Plaintiff, -against- FEDERATION OF THE HANDICAPPED and DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK, Defendants.	PRO SE 76 Civ 5652 MEMORANDUM OF OBJECTION PETITION FOR REVERSAL OF ORDER

Statement

This will make known to the Court as well as to all other interested parties and non-parties to the action my protest against the completely unwarranted dismissal of the proceedings against the Defendant Drug Abuse Control Commission of the State of New York as a wanton act of indefensible obstruction of justice, suppression of evidence and judicial dereliction of duty.

The substantive issue of this proceeding, systematically ignored by this Court is the legality, propriety and validity of a former employer to malign with impunity the credible work history of a Plaintiff in each of his attempts at alternative employment, of which this is but one among many which lends itself to litigation and remedy.

The determination in this matter prematurely affirms the prerogative of the State in this regard thereby establishing this Court as an adversary of the proprietary interests of a victim of invidious discrimination.

Paragraph two and three of the memorandum resuscitates the same stale arguements advanced by the Defendant State in support of its petition for dismissal with respect to "the alleged failure at any time to file an action with the EEOC". This of course is pure nonsense, systematically concocted to sabotage the merits of the complaint and deny the right to depose the Defendant State.

In the first place the only function of the EEOC is to validate the invalid determinations of local agencies and issue notifications of alleged right to sue. As such it is a counterproductive agency devoid of any authority to rule upon the credibility of any actions before it and is just another convenient vehicle to defraud a Plaintiff of his rights.

Secondly, the notification of termination from State employment states: "This is to confirm your termination from your position of Institution Teacher at the Arthur Kill Community Rehabilitation Center during your probationary period. Your final day of work will be Wednesday, March 27, 1974", hardly actionable grounds on the face.

On the other hand, the statement of adverse employment reference quoted in the memorandum, Page two, Par three, dated February 20, 1976, specifying reasons not disclosed prior thereto, and injected

into the Commission proceedings of February 23, 1976 in support of employment disqualification, furnished the missing grounds for actionable discrimination. However the fact that Plaintiff was denied a copy at the time constitutes a procedural defect which obstructed legitimate action before the EEOC as pointed out in prior reply brief of February 29, 1977, Page four, thus establishing the City Commission on Human Rights as another adversary of the proprietary interests of a victim of invidious discrimination. It is to be noted also that Plaintiff was first served in connection with this proceeding on April 7, 1977 by Attorneys for the Defendant Federation far in excess of the 180 day limitation which the Court asserts is conditional for the State to be rendered a party to the action.

The fundamental deficiency in support of the dismissal of the State as a party to the action is to be found in the statement, Page two, Par five: "-----, it (referring to the letter of adverse reference) was false only because the termination two years earlier was unlawful".

In point of fact it is false also because it is and continues to prevail as the current instrument of improper employment rejection and disqualification which this poor excuse for a Court of law is attempting to submerge in past tense rhetoric in behalf of the Defendant State thereby condoning its illegal acts of continuous employment obstructionism, concerning which Plaintiff is now precluded from deposing the Defendant State.

Moreover, assuming arguendo the letter of unfavorable employment reference was lawful, the Defendant Federation can no more rest its case upon it, pursuant to affirmation of "no deficiency in background in any particular area", than Plaintiff is at liberty at this time to mount his case on such a letter.

Please be advised that it was never the intent of the determination in the cited case of the National Labor Relations Board Vs Childs Co. to sustain the right of continuous employment obstructionism of a former employer. This is a misinterpretation by the Court with respect to that case. A former employer becomes liable in each instance where alternative employment is sought and the Plaintiff is driven closer to the welfare rolls by the damaging and prejudicial statements of that former employer which deny that employment.

In the instant case, Plaintiff is not in a position to deny the employment history with the Defendant State which represents qualifying experience for future employment in his field of specialization. Therefore he is entitled to have the records of that employment reflect the credibility of that experience as opposed to its unbridled condemnation by the Defendant State in each occasion where alternative employment is sought.

Apparently however such aspects of these proceedings are of no concern to a Court inordinately preoccupied with placing legal restrictions upon the Plaintiff which he insists are conditional for remedy in this matter.

With respect to the conspiracy issue, no conspiracy is ever "obvious on the face" which is the absurd suggestion of this court. But nor is it now possible to establish such conspiracy by deposition of the Defendant State as they have been wrongfully and improperly exoner-

ated and therefore cannot be taken to task any further in this regard.

Neither is it now possible because of this determination to establish through examination the pattern of prevailing harassment and discrimination as it applies to both present and former employees of the Arthur Kill Community Rehabilitation Center under the jurisdiction of Education Director Mr. George Friedman.

Finally, in view of the determination to dismiss the complaint as against the Defendant Drug Abuse Control Commission another complication relates to the admissability of all testimony taken to date as it pertains to Plaintiff's employment history with the former Defendant State. Quite obviously it must be stricken as immaterial prior to any further obligation on the part of the Plaintiff to participate in depositions before attorneys for the Defendant Federation. Additionally, since the State is no longer a party to the action, the Defendant Federation must rely upon justifications for disqualification other than the letter of the Drug Abuse Control Commission, for such a document cannot now merely prevail as a defense by the Defendant Federation against unlawful employment discrimination while having been ruled inadmissable as evidence in behalf of the Plaintiff;

Wherefore Plaintiff petitions this Court for reversal of order in addition to all other relief as sought herein preliminary to any further deposition and/or other proceedings before the Court.

Dated: Jackson Heights, New York
May 10, 1977

Albert A Coriou

ALBERT A. CORIOU,
PLAINTIFF PRO SE

To: Mark Chertok, Esq.
Attorney for the Federation
of the Handicapped
425 Park Avenue
New York, N.Y. 10022

Allen Scott Moller, Esq.
Assistant Attorney General
Attorney for Drug Abuse Control Commission
of the State of New York
Two World Trade Center
New York, N.Y. 10047

AFFIDAVIT OF SERVICE

I, ALBERT A. CORIOU, Plaintiff Pro Se in this action, of 94-26 34 Road, Jackson Heights, New York 11372, declare under the penalty of perjury that I have served a copy of the within memorandum of objection and petition for reversal of order by depositing same, properly enclosed in a post paid wrapper, in the post office letter receptacle regularly maintained at 33-23 Junction Boulevard, Corona, New York 11368 directed to the foregoing parties at the addresses indicated within the State designated by them for that purpose or the place where they kept an office, between which places there then was and now is a regular communication by mail.

ATTEST,

Albert A Coriou

ALBERT A. CORIOU
Plaintiff, Pro Se
May 10, 1977

1.

Document XI

U.S. DISTRICT COURT
FILED
MAY 12, 1977
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ALBERT A. CORIOU,

Plaintiff,

-against-

FEDERATION OF THE HANDICAPPED and DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,

Defendants.

- x

PRO SE 76 Civ. 5652

MEMORANDUM

FRANKEL, D.J.

The plaintiff has filed a "Petition for Reversal of Order." Treating this as a motion for reargument or reconsideration, the motion is denied.

So ordered.

MARVIN E. FRANKEL

Dated, New York, New York
May 11, 1977

U.S.D.J.

MICROFILMED
MAY 12 1977

DOCUMENT XI

5/16/77

To appeal [illegible] copy of the notice, and one copy for each [illegible]. Print the attorney's name and address under the word "Notice" on bottom left.

If you are [illegible] the $5 fee, take it to Orders and Appeals, G [illegible].

If you wish to file as an indigent, ask for and complete the affidavit of indigency form required by the Court of Appeals.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

ALBERT A. CORIOU,

PLAINTIFF,

-AGAINST-

FEDERATION OF THE HANDICAPPED AND DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK

Docket Number: 76 CIV 5652

Judge: MEF

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Notice is hereby given that ALBERT A. CORIOU, above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the decision and order of U.S.D.C. - S.D.N.Y. (FRANKEL J) dismissing ~~his~~/his complaint or petition (cross out one) on MAY 4 (date), 197 7.

Notice To:

JULIAN SCOTT MILLER, ESQ.
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR DRUG ABUSE
CONTROL COMMISSION OF THE
STATE OF NEW YORK
TWO WORLD TRADE CENTER
NEW YORK, N.Y. 10047

WEBER, NEUBURGER AND SILVE
ATTORNEYS FOR DEFENDANT FEDERATION OF THE HANDICAPPED
[illegible] PARK AVENUE

Signed Albert A. Coriou

Address 94-26 31st ROAD, JACKSON HEIGHTS, N.Y. 11372

Telephone [212] 457-4478

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X FILED ROA

ALBERT A. CORIOU,

Plaintiff Pro Se

-against-

FEDERATION OF THE HANDICAPPED and DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK,

Defendants

---

76 Civ 5652 (MEF)

NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION

SIRS:

PLEASE TAKE NOTICE that on the 20th day of July 1977 at 9:00 o'clock in the forenoon at the United States District Court House for the Southern District of New York, Foley Square, New York, N.Y. (Room 33), the Plaintiff in the above entitled action will take the deposition upon oral examination of Mr. Charles I Scheps, Program Coordinator, Federation of the Handicapped, 154 West 14 Street, New York, N.Y. 10011, before a notary public or other officer or person authorized by law to administer oaths. The oral examination will proceed from day to day until completed and subject Pro ram Coordinator is requested to make himself available until such completion.

PLEASE TAKE FURTHER NOTICE that the above named party to the action whose deposition is being taken is hereby directed to set all business and excuses aside to appear for said deposition with all evidentiary matter in any form including all files, records, notes and other pertinent papers and documents of any kind relating to this proceeding any or all of which in any way may be interpreted as disqualifying material in Plaintiff's employment with respect to his field of specialization and other personal and professional qualifications.

Dated: Jackson Heights, New York
July 18, 1977

PLF'S EX 1 (ID)
7-20-77
MD

Yours, etc.,

Albert A Coriou

Albert A. Coriou,
Plaintiff, Pro Se
94-26 34th Road
Jackson Heights
New York, 11372
(212) 457-4478

To: Charles I. Scheps, Program Coordinator
Federation of the Handicapped
154 West 14 th Street
New York, N.Y. 10011

Mark A. Chertok, Esq
Winer, Neuberger and Sive
Attorneys for the Federation of the Handicapped
425 Park Avenue
New York, N.Y. 10022

AFFIDAVIT OF SERVICE

I, ALBERT A. CORIOU, Plaintiff Pro Se in this action, of the foregoing address, declare under the penalty of perjury that I have served a copy of the within notice to take deposition upon oral examination by depositing same, properly enclosed in a post paid wrapper, in the post office letter recepticle regularly maintained at 33-23 Junction Boulevard, Corona, New York 11368 directed to the foregoing parties at the addresses indicated within the state designated by them for that purpose or the place where they kept an office, between which places there then was and now is a regular communication by mail.

ATTEST,

Albert A Coriou

ALBERT A. CORIOU,
Plaintiff Pro Se
July 18, 1977

mdrf

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

ALBERT A. CORIOU, :

Plaintiff, :

-against- : 76 Civ. 5652(MEF)

FEDERATION OF THE HANDICAPPED, :

Defendant. :

----------x

July 20, 1977
9:20 a.m.

Deposition of the Defendant by CHARLES I. SCHEPS, taken by Plaintiff, pursuant to a letter of July 18, 1977 held at the United States Court House, Room 2804, Foley Square, New York, N.Y., before Molly Danish, C.S.R., Larry Hennefeld, C.S.R. and Robert X. Shaw, a Shorthand Reporter and Notaries Public of the State of New York.

MR. CORIOU: I agree with Mr. Chertok on that. Let's mark the response of the defendant Federation of the Handicapped to plaintiff's notice to produce dated April 7, 1977 as Plaintiff's Exhibit 9 for identification.

(Response of Federation of the Handicapped to plaintiff's notice to produce dated April 7, 1977 marked Plaintiff's Exhibit 9 for identification.)

xx

Q Let me show you this document, Plaintiff's Exhibit 9, Mr. Scheps, which is a letter from George Friedman, Education Director, adverse employment reference. Let me show you that.

(Handing.)

A What was the question?

Q Was I served a copy at the time of the factfinding conference of that letter?

A Are you asking if you were given a copy of that at the conference?

Q Yes.

A At the direction of the Hearing Examiner it was not given to you.

Q It was not given to me, is that right?

A Right, at the direction of the Hearing

Examiner, you were not given a copy.

Q Mr. Scheps, who else besides you from your agency attended the factfinding conference?

A Our Executive Director was also present.

Q What is his name?

A Milton Cohen.

Q Do you at that time recall my protests at your refusal to authorize the service of a copy of that adverse employment reference?

A I do.

MR. CHERTOK: His refusal to authorize or the Hearing Officer's refusal?

Q Do you at that time recall my protests at your refusal to authorize the service of a copy of that adverse employment reference?

A I recall your protests of the fact that you did not receive a copy. Let me state you were not given a copy on the basis of the determination by the Hearing Examiner that you should not be given a copy.

Q So you are blaming it on Cintron?

A He was the one that was conducting the session. Yes.

Q Supposing you would have handed the paper

over to me by yourself? What would he do, slap your hand down?

A I have no way of knowing what he would do.

Q Did you sympathize with the fact that I might need a copy for my own rights?

MR. CHERTOK: I object. This is irrelevant. Sympathy or lack of sympathy is irrelevant.

MR. CORIOU: I agree with his objection. I withdraw the question.

Q Do you recall the Hearing Examiner requesting your approval to serve that document upon me?

A No.

Q You don't recall that?

A No.

Q Let's change the subject again.

Did you ever meet or were you ever associated in any way personally or professionally with my prior employer before you contacted him for an appraisal of work history?

MR. CHERTOK: You are referring to Mr. Friedman?

MR. CORIOU: Yes.

Q In connection with my application?

A Yes.

every specific job, I at this point cannot say definitively which was equal or not or comparable.

Q I were asked the question differently. Who had the better qualifications in your estimation, candidate Borenstein or candidate Coriou?

A In terms of what?

Q In terms of the total resume in total work experience and background of each candidate.

MR. CHERTOK: Including or excluding the recommendation?

Q Excluding the letter of reference as a factor.

MR. CHERTOK: Not the letter but the conversation that was held between the two.

MR. CORIOU: Whatever.

A On the basis of the piece of paper as I stated, they are comparable nad perhaps you had a slight edge on the basis of the resume alone.

MR. CORIOU: I think they are trying to be nice to me now, do you know that?

Q Mr. Scheps, did Borenstein have any medical or clinical experience with handicapped clients?

A I do not recall.

FILED R.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALBERT A. CORIOU, Plaintiff Pro Se, -against- FEDERATION OF THE HANDICAPPED AND DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK, Defendants.	76 CIV 5652 (MEF) NOTICE OF MOTION FOR REINSTATEMENT OF COMPLAINT AS AGAINST THE DRUG ABUSE CONTROL COMMISSION OF THE STATE OF NEW YORK

Statement

PLEASE TAKE NOTICE that the Plaintiff in the above entitled action, upon the enclosed ground of Notice of Right to Sue of the Department of Justice dated July 22, 1977 and pursuant to memorandum of dismissal as against the Drug Abuse Control Commission of the State of New York dated May 3, 1977, respectfully petitions this court to rejoin both parties as co-defendants for the purpose of adjudication in this matter.

Dated: Jackson Heights
New York
July 26, 1977

Yours, etc.,

Albert A Coriou

ALBERT A. CORIOU
P.O. Address
94-26 34th Road
Jackson Heights
New York 11372
(212) 457-4478

To: Allan S. Moller, Esq.
Assistant Attorney General
Office and P.O. Address
Two World Trade Center
New York, N.Y. 10047

Mark A. Chertok, Esq.
Winer, Neuberger and Sive
Attorneys for the Federation
of the Handicapped
425 Park Avenue
New York, N.Y. 10022

No. 1 [illegible]
RETURN RECEIPT REQUESTED

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO United States District Court
Southern District of New York
STREET AND NO.
1 Foley Square
P.O., STATE AND ZIP CODE
New York, NY 10007

POSTMARK OF DATE

JUL 26 1977

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered — 35¢
With restricted delivery — 85¢
2. Shows to whom, date and where delivered — 50¢
With restricted delivery

RESTRICTED DELIVERY
SPECIAL DELIVERY extra fee required

PS Form 3800 Aug. 1975 — NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL — See other side

No. 1 [illegible]
RETURN RECEIPT REQUESTED

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

Allan S. Mowes, Asst. Atty. Gen.
Two World Trade Center
New York, NY 10047

JUL 26 1977

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered — 35¢
With restricted delivery — 85¢
2. Shows to whom, date and where delivered — 50¢
With restricted delivery

RESTRICTED DELIVERY
SPECIAL DELIVERY extra fee required

PS Form 3800 Aug. 1975 — NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL — See other side

No. 1 [illegible]
RETURN RECEIPT REQUESTED

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

Mark A. Cheaton
425 Park Avenue
New York, NY 10022

POSTMARK OF DATE

JUL 26 1977

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered — 35¢
With restricted delivery — 85¢
2. Shows to whom, date and where delivered — 50¢
With restricted delivery

RESTRICTED DELIVERY
SPECIAL DELIVERY extra fee required

PS Form 3800 Aug. 1975 — NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL — See other side

PS Form 3811 Jan. 1975 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

7/26/77

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered ..... 15¢
- ☐ Show to whom, date, & address of delivery .. 35¢
- ☐ RESTRICTED DELIVERY Show to whom and date delivered ..... 65¢
- ☑ RESTRICTED DELIVERY Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
MARK A. CHERTOK
WINER, NEUBERGER & SIVE
425 PARK AVENUE
NEW YORK, N.Y. 10022

3. ARTICLE DESCRIPTION

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	119631	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY | POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

☆ GPO: 1975—O-568-047

PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered
- ☐ Show to whom, date, & address of delivery
- ☐ RESTRICTED DELIVERY Show to whom and date delivered
- ☑ RESTRICTED DELIVERY Show to whom, date, and address of delivery

2. ARTICLE ADDRESSED TO:
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
FOLEY SQUARE, NEW YORK, N.Y. 10007

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	119629	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY | POSTMARK
7/27/77

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

SOUTHERN DISTRICT OF NEW YORK
NEW YORK CITY, N.Y. 10007
JUL 27 1977
USES

☆ GPO: 1975—O-568-047

PS Form 3811, Jan. 1975

CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered ..... 15¢
- ☐ Show to whom, date, & address of delivery .. 35¢
- ☐ RESTRICTED DELIVERY Show to whom and date delivered ..... 65¢
- ☑ RESTRICTED DELIVERY Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
ALLAN S. MOLLER, ESQ.
ASSISTANT ATTORNEY GENERAL
TWO WORLD TRADE CENTER
NEW YORK, N.Y. 10047

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	119630	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

E. Basket

DATE OF DELIVERY | POSTMARK

ADDRESS (Complete only if requested)
JUL 27 1977

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

☆ GPO: 1975—O-568-047

19

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

DSD:HAG:ljt

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

July 22, 1977

CERTIFIED MAIL

Mr. Albert A. Coriou
94-26 34th Road
Jackson Heights, New York 11372

Re: EEOC Charge Against New York State
Drug Abuse Control Commission
No. 021-77-2223

Dear Mr. Coriou:

Because you filed the charge against the respondent named above with the Equal Employment Opportunity Commission, and the Commission has dismissed that charge, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice. If you are unable to retain an attorney, the Court is authorized in its discretion to appoint an attorney to represent you and to authorize commencement of the suit without payment of fees, costs, or security. In order to apply for an appointed attorney, you may take this Notice, along with any correspondence you have received from the Justice Department or the Equal Employment Opportunity Commission, to the Clerk of the United States District Court in New York.

Your attorney may inspect the investigative file pertaining to your case at a time and place convenient to the parties. That file is located in the EEOC District Office, at 90 Church Street, Room 1301, New York, New York 10007.

We request that you send this Department a copy of any complaint initiating suit.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

By: Herbert A. Goldsmith, Jr.

Herbert A. Goldsmith, Jr.
Attorney
Employment Section

cc: Arthur W. Stern
District Director
New York District Office
Equal Employment Opportunity
Commission
90 Church Street, Room 1301
New York, New York 10007